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In the
Supreme Court of the United States

OCTOBER TERM, 1968

No. 242

JORGE I. ROSSO AND WIFE CARMEN DESCARTES,
APPELLANTS,

v.

COMMONWEALTH OF PUERTO RICO,
APPELLEE.

ON APPEAL FROM THE SUPREME COURT OF THE COMMONWEALTH OF PUERTO RICO (CONDEMNATION PROCEEDINGS)

MOTION TO DISMISS APPEAL

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TO THE HONORABLE COURT:

Now comes appellee, the Commonwealth of Puerto Rico, and respectfully submits the following Motion to Dismiss Appeal, pursuant to Rule 16 (1) (b) of the Rules of this Honorable Court, on the ground that the appeal, as reflected in the Jurisdictional Statement, does not present a substantial federal question.

Statement of Facts

The facts of this case are substantially as stated by appellants in the Statement of the Case in their Jurisdictional Statement.

In summary, the Supreme Court of the Commonwealth of Puerto Rico sustained the constitutionality of the challenged local Act and the validity of the condemnation proceedings pursuant thereto, finding that there was a public necessity for the taking in harmony with the Commonwealth's legislative policy, which policy is the result of local exigencies.

Discussion of Questions Raised in Jurisdictional Statement

Four questions are raised by Appellants in their Jurisdictional Statement.

FIRST QUESTION

The first question presents no substantial federal question. It reads:

> "1. Whether, since Appellants' lands were not taken for any specific present but for an undetermined and unspecified use in the future, and there was no public necessity for the taking, said taking was arbitrary and capricious and in violation of due process of law guaranteed by the Fifth and Fourteenth Amendments to the Constitution."

The condemnation of land in this case has been held by the Supreme Court of the Commonwealth of Puerto Rico

to be authorized by the Constitution and laws of the Commonwealth and, specifically, by the challenged Act. The Constitution of the Commonwealth of Puerto Rico authorizes no exercise of the right of eminent domain except for public uses. The Commonwealth Supreme Court held, in the portions of its opinion applicable to the first question propounded:

> "For the reasons stated, we must conclude that:
>
> i. Act No. 13 of May 16, 1962 is constitutional in all of its aspects, means and methods. *It constitutes a legitimate use of the public power for the protection of what, for a community of 2,712,808 human beings, struggling in a small territory of 3,435 square miles, is their most precious value for survival: living space.**
>
> ii. The creation of the Land Administration of Puerto Rico and the powers and faculties it exercises to execute the purposes and ends of Act 13 of 1962 are constitutional.
>
> v. All acquisition of lands by the Administration with a view to complying with the provisions of Act 13 of 1962 is of public interest and of social benefit, for which condemnation proceedings may be used...." (Pages 124 and 125 of the Appellants' Appendix to Jurisdictional Statement). (Italics Ours)

In *Hairston* v. *Danville & W. R. Co.*, 208 U.S. 598, 607 this Honorable Court stated "No case is recalled where this court has condemned, as a violation of the 14th Amendment, a taking upheld by the state court as a taking for

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* The italicized portion was deleted from the quotation of said part of the opinion which appears on page 28 of Appellants' Jurisdictional Statement.

public uses in conformity with its laws. . . . *The cases cited, however, show how greatly we have deferred to the opinions of the state courts on this subject, which so closely concerns the welfare of their people.*" (Italics Ours).

In *Cincinatti* v. *Vester*, 281 U.S. 439, 446, this Honorable Court stated:

> "It is well established that in considering the application of the 14th Amendment to cases of expropriation of private property, the question what is a public use is a judicial one. *In deciding such a question the court has appropriate regard to the diversity of local conditions and considers with great respect legislative declarations and in particular the judgments of state courts as to the uses considered to be public in the light of local exigencies.*" (Italics Ours)

In *Rindge Co.* v. *Los Angeles County*, 262 U.S. 700, this Honorable Court stated:

> "In determining whether the taking of property is necessary for public use *not only the present demands of the public*, but those which may be fairly anticipated in the *future*, may be considered. *Central P.R. Co.* v. *Feldman*, 152 Cal. 303, 309, 92 Pac. 849." (Italics Ours)

In the instant case, there is a clear legislative declaration and there is a judgment of the highest court of the Commonwealth, based on the local legislative declaration in the light of local exigencies.

In *U. S. Ex Rel. T. V. A.* v. *Welch*, 327 U.S. 546, 551 (1946) this Honorable Court held:

"We think that it is the function of Congress to decide what type of taking is for a public use and that the agency authorized to do the taking may do so to the full extent of its statutory authority. United States v. Gettysburg Electric R. Co. 160 US 668, 679, 40 L ed 576, 580, 16 S Ct 427. It is true that this Court did say in Cincinnati v. Vester, 281 US 439, 446, 74 L ed 950, 955, 50 S Ct 360, that 'It is well established that in considering the application of the Fourteenth Amendment to cases of expropriation of private property, the question what is a public use is a judicial one.' But the Court's judgment in that case denied the power to condemn 'excess' property on the ground that the state law had not authorized it. And in Hairston v. Danville & W. R. Co. 208 US 598, 607 52 L ed 637, 641, 28 S Ct 331, 13 Ann Cas 1008, this Court, referring to the 'rule' later stated in the Vester Case, said that 'No case is recalled where this court has condemned as a violation of the Fourteenth Amendment a taking upheld by the State Court as a taking for public uses in conformity with its laws.' And see Madisonville Traction Co. v. Bernard, Min Co. 196 US 239, 257, 260, 261, 49 L ed 462, 469, 471, 25 S Ct 251. But whatever may be the scope of the judicial power to determine what is a 'public use' in Fourteenth Amendment controversies, this Court has said that when Congress has spoken on this subject 'Its decision is entitled to deference until it is shown to involve an impossibility.' Old Dominion Land Co. v. United States, 269 US 55, 66, 70 L ed 162, 46 S Ct 39. Any departure from this judicial restraint would result in courts deciding on what is and is not a governmental function and in their invalidating legislation on the basis of their view on

that question at the moment of decision, a practice which has proved impracticable in other fields."

Based on the above, we respectfully submit that the first question propounded raises no substantial federal question for the consideration of this Court.

SECOND QUESTION

The second question upon which jurisdiction of this Honorable Court is claimed, reads:

> "2. Whether, since Appellants' lands were not vacant, and Appellants were not engaged in land speculation, land monopolization, withholding lands from development or impeding urbanization of lands suitable therefor, but were developing their lands integrally with surrounding areas in conformity with the applicable law and regulations for the uses and purpose determined by the Commonwealth Government to be the best use and purpose for said lands, and in pursuance to the declared public policy of the Commonwealth to provide industrial, commercial, and housing development, the condemnation of said lands was not authorized by the Land Administration Act nor the Planning Board and was therefore in violation of due process of law guaranteed by the Fifth and Fourteenth Amendments."

Obviously, the question presented amounts to no more than an attempt to disturb the Commonwealth of Puerto Rico Supreme Court's construction of The Land Administration Act and its scope. That is to say, Appellants are seeking to disturb the judgment of the Supreme Court of Puerto Rico on a question of local law. It has been an

unquestioned principle that this Honorable Court will not disturb interpretations of local law by the highest court of a state unless they appeared to be clearly wrong. The same principle has been applied to Puerto Rico by this Honorable Court even before the establishment of the Commonwealth status in 1952.

In *Bonet* v. *Texas Co.* 308 U.S. 463, 470 (1940) this Honorable Court stated:

> "For over sixty years this Court has consistently recognized the deference due interpretations of local law by such local courts unless they appeared to be clearly wrong. From Sweeney v. Lomme, 22 Wall. 208, decided in 1874, to Bonet v. Yabucoa Sugar Co., supra, decided in 1939, repeated admonitions to that effect have been given. That rule is founded on sound policy. As this court recently stated, 'Orderly development of the government of Puerto Rico as an integral part of our governmental system is well served by a careful and consistent adherence to the legislative and judicial policy of deferring to the local procedure and tribunals of the Island.' Bonet v. Yabucoa Sugar Co., supra, p. 510.
>
> "We now repeat once more that admonition. And we add that mere lip service to that rule is not enough. To reverse a judgment of a Puerto Rican tribunal on such a local matter as the interpretation of an act of the local legislature, it would not be sufficient if we or the Circuit Court of Appeals merely disagreed with that interpretation. Nor would it be enough that the Puerto Rican tribunal chose what might seem, on appeal, to be the less reasonable of two possible interpretations. And such judgment of reversal would not be sustained here even though we felt that of several possible interpretations that of the Circuit

Court of Appeals was the most reasonable one. For to justify reversal in such cases, the error must be clear or manifest; the interpretation must be inescapably wrong; the decision must be patently erroneous."

It appears that this is not a substantial federal question on appeal.

THIRD QUESTION

The third question raised is stated as follows:

"3. Whether, in so far as the Land Administration Act permits the sale of condemned lands to developers with the restriction that sales by them of the units formed and constructed by them to the public shall be made at prices 'limiting through a proper formula their profits with respect to the land and all other costs' of the development, it permitted the fixing of prices which would be arbitrary, discriminatory and demonstrably irrelevant to the policy adopted by the Legislature, not in fair and open competition with units of the same general class formed and constructed by others, without procedural due process, in violation of due process of law and in denial of the equal protection of the laws guaranteed by the Fifth and Fourteenth Amendments to the Constitution."

The Statement of the Case, as submitted by Appellants, is the best evidence to show that this is a hypothetical matter, not supported by a genuine controversy and, as such, beyond the jurisdictional ambit of this Court.

In *Cincinatti* v. *Vester* (supra) it was stated:

"It is an established principle governing the exercise of the jurisdiction of this court, that it will not decide important constitutional questions unnecessarily or hypothetically. Liverpool, N.Y. & P.S.S. Co. v. Emigration Comrs. 113 U.S. 33, 39, 28 L ed. 899, 901, 5 Sup. Ct. Rep. 352; Siler v. Louisville & N.R. Co. 213 U.S. 175, 191, 193, 53 L. ed. 753, 757, 758, 29 74 L. ed. 956 Sup. Ct. Rep. 451; United States ex rel. Atty. Gen. v. Delaware & H. Co. 213 U.S. 366, 407, 53 L. ed. 836, 848, 29 Sup. Ct. Rep. 527."

It appears that the third question does not constitute a substantial federal question.

FOURTH QUESTION

The appellants present their fourth question as follows:

"4. Whether, the Land Administration Act delegates legislative powers to the Land Adminstration since no sufficiently basic standards and safeguards, definite and certain policy and rule of action for guidance to administer said law is provided therein or otherwise and since the Act vests in the Land Administration discretion which is arbitrary and power to determine what that law should be, in violation of the constitutional principle of separation of powers guaranteed by the Constitution and by Article III, Section I of the Constitution of Puerto Rico adopted pursuant to the requirements of Section 3 of Public Law 600, 81st Congress (Act of July 3, 1950, c. 446; 64 Stat. 314, Titles 1, 2-3 LPRA, p. 137) and approved by Joint Resolution of the Congress (Public Law 447; 82nd Congress, J.R. of July 3, 1952, c. 567; 66 Stat. 327, Titles 1, 2-3 LPRA, pp. 144-145)."

The appellants fail to identify the federal source necessary in order for this Honorable Court to pass judgment on the alleged violation, by the Commonwealth of Puerto Rico, of the principle of separation of powers decreed by its own constitution. The cases that have been decided by this Honorable Court establish that a violation of a State's own requirement of separation of powers does not present a substantial federal question. *Dreyer* v. *Illinois,* 1902, 187 U.S. 71, 83-84; *Carter* v. *Caldwell,* 1906, 200 U.S. 293, 297; *Prentis* v. *Atlantic Coast Line,* 1908, 211 U.S. 210, 225.

Clearly, the above question does not present a substantial federal question.

Conclusion

For the above reasons, it appearing that Appellants' Jurisdictional Statement fails to indicate the presence of any substantial federal question and that, on the contrary, the questions raised are matters of local law of the Commonwealth of Puerto Rico, Appellee respectfully moves this Court to enter an Order dismissing this appeal.*

San Juan, Puerto Rico, July 12, 1968.

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* See *Porto Rico Railway, Light & Power Co.* v. *Miranda,* 289 U.S. 731; *Cardona* v. *Quinones,* 240 U.S. 83, 88; *Diaz* v. *Gonzalez,* 261 U.S. 102, 105, 106; *Cami* v. *Central Victoria, Ltd.,* 268 U.S. 469, 470; *American Trading Co.* v. *Heacock Co.,* 285 U.S. 247, 261.